



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,602	09/29/2003	Carlos Schuler	0076.10	9993

21968 7590 10/03/2007
NEKTAR THERAPEUTICS
201 INDUSTRIAL ROAD
SAN CARLOS, CA 94070

EXAMINER

PATEL, NIHIR B

ART UNIT	PAPER NUMBER
----------	--------------

3772

MAIL DATE	DELIVERY MODE
-----------	---------------

10/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/675,602	Applicant(s) SCHULER ET AL.	
	Examiner Nihir Patel	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on July 24th, 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 33 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims **22-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5,740,794).

5. As to claims **22-26, 29 and 31**, a support member **108** (see figure 10); a plurality of outer blades (see figure 11A; the walls of flow structures **142** and **146** define the plurality of blades) extending downward from the support member; a member **140** (see figure 7) extending downward from the support member with the member being surrounded by the outer blades (see figure 7), wherein a distal end of the member includes a plurality of inwardly directed and

outwardly facing blades (see figures 11A; the walls of flow structures 142 and 146 define the plurality of blades) but does not provide plurality of blades extending downward from the support member at an angle in the range from about 50 to 80 degrees and having a width in the range from about 0.3 to about 2 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Seidler's invention by providing provide plurality of blades extending downward from the support member at an angle in the range from about 50 to 80 degrees and having a width in the range from about 0.3 to about 2 mm. Since it has been held that where the general conditions of the claims are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art *In re Aller*, 105 USPQ 233.

6. As to claims 27 and 32, Smith substantially discloses an apparatus that further comprises a gas source that is configured to flow a gas stream through at least a portion of the tubular member to draw gases through the inlet openings, through the cavity and through the tubular member (see abstract).

7. As to claims 28 and 33, Smith substantially discloses an apparatus that further comprises a mouthpiece, wherein suction on the mouthpiece 32 causes a gas stream to flow at last a portion of the tubular member to draw gases through the inlet openings, through the cavity and through the tubular member (see column 14 lines 10-45).

8. As to claim 30, Smith substantially discloses an apparatus that further comprises a circular outer periphery, and further comprising a plurality of outer blades that are arranged to form a plurality of inlet openings about the outer periphery to surround the outlet opening (see figure 11B).

Art Unit: 3772

9. Claims **1-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,740,794).

10. **As to claims 1-11**, Smith substantially discloses method steps of providing a receptacle having a cover with an exterior surface and an interior surface covering a cavity (**see figure 1**); providing a cutting mechanism **140 and 150** (**see figures 10 and 11**) having multiple blades piercing the cover with the blade (**see column 14 lines 10-45**); moving the blades through the cover to cut a portion of the cover to create multiple openings in the cover and thereby provide access into the cavity, with the cut portion being removed away from the cavity as the openings are created (**see column 14 lines 10-45**).

The claimed method step would have been obvious because they would have resulted from the use of the device of Smith.

11. **As to claims 12-20**, Smith substantially discloses method steps of providing a receptacle having a cover with an exterior surface and an interior surface covering a cavity (**see figure 1**) that contains a powder; providing a cutting mechanism **140 and 150** (**see figures 10 and 11**) having at least one outer blade and a plurality of inner blades (**see figures 10 and 11**); piercing the cover with the outer blade and the inner blade (**see column 14 lines 10-45**); moving the outer blade through the cover to cut a portion of the cover and to create an outer opening in the cover, with the cut portion being removed away from the cavity as the opening is created, and simultaneously moving the inner blades through the cover to cut an inner opening in the cover; and drawing air through the outer opening through the cavity and out the inner opening to extract the powder from the receptacles and to aerosolize the powder (**see column 14 lines 1-45**).

The claimed method step would have been obvious because they would have resulted from the use of the device of Smith.

12. **As to claim 21**, Smith substantially discloses method steps of providing a receptacle having a cover with an exterior surface and an interior surface covering a cavity (**see figure 1**); providing a body having a distal end with plurality of inwardly directed and outwardly facing blades **140 and 150** (**see figures 10 and 11**); piercing the cover with the blades; rotating the body to form multiple openings in the cover (**see column 14 lines 10-45**).

The claimed method step would have been obvious because they would have resulted from the use of the device of Smith.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit 3772



Nihir Patel



PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
9/29/07